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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOAN D. TESCHÉ, : Civil Action No. 1:CV-01-0326  
Plaintiff :  
v. :  
:   
CNA INSURANCE COMPANIES, and :  
CONTINENTAL CASUALTY COMPANY, :  
:   
Defendants : (Judge Caldwell)

PLAINTIFF'S TRIAL BRIEF

I. EVIDENCE TO BE PRESENTED

**FILED**  
HARRISBURG, PA

AUG 07 2002

MARY E. D'ANDREA, CLERK  
Per                       
Deputy Clerk

Plaintiff, Joan D. Tesché ("Mrs. Tesché"), will testify about various related topics including:

(a) her educational background, training, work experience, and medical history;

(b) her application for and award of Social Security disability benefits; and

(c) the subjects addressed in her affidavit in support of her motion for summary judgment, including: her interview with defendant's Disability Specialist, Tony Gullledge; her activities of daily living; and the reasons why she believes she is totally disabled from any employment.

As confirmed in Mrs. Tesché's pre-trial memorandum, plaintiff had anticipated either stipulating to settled vocational principles or receiving identical testimony from defendant's disability specialist, Mr. Gulledge. However, after the pre-trial briefs were filed, plaintiff's undersigned attorney was informed that Mr. Gulledge was no longer employed by defendant. Therefore, in the absence of any stipulation (or qualified defendant representative), plaintiff has proposed to take the deposition of a vocational expert, Dr. Mark Lucas. Plaintiff will also ask the Court to judicially notice the threshold test for determining whether a claimant is disabled: Whether the claimant is able to perform "...sustained work activities in an ordinary work setting on a regular and continuing basis...." Bradford Dorrance's Supplemental Affidavit in Support of Plaintiff's Summary Judgment Motion, Exhibit A at 149 (Social Security Ruling 96-8p).

Defendant intends to produce its representative, Cheryl Sauerhoff, who made the final administrative decision terminating Mrs. Tesché's LTD benefits under the "any occ" definition of the policy. Plaintiff intends to receive testimony from Ms. Sauerhoff (as on cross or by cross examination) on several subjects, including defendant's appeal process and its rationale

for terminating Mrs. Tesché's benefits. If Ms. Sauerhoff is qualified as a vocational expert, plaintiff will ask her questions relating to the threshold test for disability, as described in Dr. Lukas's expert report. (In accordance with Judge Caldwell's August 5, 2002 order, the parties will address the admissibility of Dr. Lukas's report and testimony in later submissions.)

Plaintiff anticipates that her treating physician, Steven B. Wolf, M.D., a board certified orthopedic surgeon, will testify about his lengthy observation and treatment of the patient, including his opinion that Mrs. Tesché is totally disabled from any employment.

## II. PRINCIPAL LEGAL ISSUES

A. Whether, based on a de novo standard (or the arbitrary and capricious standard), the Court should find that Mrs. Tesché is unable to continuously engage in any occupation, including the potential jobs identified by defendant?

(Suggested answer in the affirmative.) See, e.g., Mitchell v. Eastman Kodak Company, 113 F.3d 433 (3d Cir. 1997).

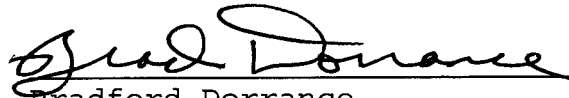
B. Whether Mrs. Tesché is entitled to retroactive LTD benefits, accrued interest, attorneys' fees, and costs?

(Suggested answer in the affirmative.) See, e.g.,  
Anthuis v. Colt Industries Operating Corp., 971 F.2d 999 (3d Cir.  
1992). 29 U.S.C. § 1132(g)(1) et seq.

Respectfully submitted,

KEEFER WOOD ALLEN & RAHAL, LLP

Dated: 8/7/02

  
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document upon the person(s) and in the manner indicated below:

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Dated: 8/7/02

  
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